State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE

IN SUPPORT OF:

S.B. No. 365 (RAISED) AN ACT CONCERNING CHILD ENDANGERMENT WHILE DRIVING WHILE INTOXICATED AND THE TIME LIMIT UNDER WHICH TO ADMINISTER A TEST FOR A BLOOD ALCOHOL LEVELS

JOINT COMMITTEE ON JUDICIARY
March 7, 2016

The Division of Criminal Justice supports S.B. No. 365, An Act Concerning Child Endangerment While Driving While Intoxicated and the Time Limit Under Which to Administer a Test for Blood Alcohol Levels, which deals with the passage of impaired driving legislation aimed at protecting children who are passengers in vehicles driven by impaired motorists and the modification of the two-hour rule applicable to chemical testing following an impaired driving arrest. The child endangerment provisions are the product of discussions between the Division of Criminal Justice and Mothers Against Drunk Driving (MADD) and the Division wishes to express its appreciation to MADD for its work on this bill. The Division recommends the Committee's JOINT FAVORABLE SUBSTITUTE Report to address some concerns with the language of the bill as now drafted.

Section 1 creates a new impaired driving statute that will penalize motorists who operate while impaired when children under age 18 are passengers in the vehicle. The Division believes that the creation of this new stand-alone impaired driving statute will be more effective in penalizing and rehabilitating these offenders. To help understand why the newly proposed statute is an improvement, it is important to understand the current statutory scheme. Presently, impaired drivers who operate with children as passengers in the vehicle are charged with two violations: (1) operating under the influence of intoxicating liquor and or drugs, in violation of Section 14-227a, and (2) Risk of Injury to a Minor, in violation of Section 53-21. Operating under the influence is a misdemeanor for a first offender. For those who qualify, the Alcohol Education Program is an available diversionary program. Risk of Injury, however, is a class C felony with a maximum penalty of ten years in prison. It is not eligible for use with the Alcohol Education Program. Consequently, impaired driving child endangerment cases frequently get bogged down during plea negotiations. The offenders, who are often the parents of the child victims, would otherwise plead and resolve their cases with programs or probation with treatment and counseling but wish to avoid conviction for Risk of Injury at all cost.

Police officers, prosecutors and judges also understand these concerns, which can be heightened when the offender is the parent of the child victim, and will sometimes advocate for dropping or not charging Risk of Injury or seek to substitute that felony charge with misdemeanor Reckless Endangerment charges to resolve the cases. As a result, however, the seriousness of these cases is inadequately addressed because the penalties set forth in our impaired driving statute – Section 14-227a – are insufficiently robust to address the seriousness of impaired driving crimes that occur with child passengers.

Section 1 of proposed S.B. 365 resolves these problems by creating an impaired driving statute specifically tailored to address the problem of impaired driving child endangerment. As an unclassified felony, impaired driving child endangerment offers an appropriate range of penalties that reflect the seriousness of the offense, yet are also more tempered in comparison to the class C felony that is Risk of Injury. The penalties also include mandatory evaluations by the Department of Children and Families to quickly assess any ongoing risks posed to the child victims in the event that the offenders are parents or guardians. The newly envisioned probation, likewise, contemplates specialized programming and treatment such as parenting classes if deemed appropriate by DCF. As such, this newly proposed statute effectively protects our most vulnerable population – children – while at the same time, considering the unique penal and rehabilitative needs of the offenders.

The newly proposed statute is also efficiently drafted such that the penalty provisions dovetail with those of Section 14-227a. By defining "a prior conviction for the same offense" as a prior conviction of newly raised Section 1 as well as subsection (a) of section 14-227a, subsection (a) of section 14-227g, subsection (a) of newly raised Section (2) (discussed below), subsection (a) of section 53a-56b and subsection (a) of section 53a-60d, it is not necessary to separately track impaired driving convictions. If a person is convicted of impaired driving under section 14-227a and is subsequently charged with impaired driving child endangerment, the applicable penalty will be the second offender penalty set forth in new Section 1. If a person is convicted of impaired driving child endangerment under the new Section 1 and is subsequently charged with impaired driving under section 14-227a, the applicable penalty will be the second offender penalty set forth in section 14-227a. In short, the pending charge governs the applicable penalty. And, this is as it should be because new Section 1 is designed only to penalize offenders who operate motor vehicles under the influence while children are passengers in the vehicles.

The Division does, however, propose amending Section 1 of the bill to include language defining "elevated blood alcohol content" as 0.02 for operators under the age of 21. This change is necessary for consistency with all other existing impaired driving statutes including the new Section 2.

Section 2 creates a new impaired driving statute that will penalize impaired motorists who operate vehicles specially designed or designated for carrying children including, but not limited to, school buses. Unfortunately, we have seen a rise in these extremely serious offenses. A statute specifically tailored to address this problem is warranted. The class C felony penalties are appropriate and use of a properly titled stand-alone statute, in lieu of Risk of Injury, more appropriately reflects the motor vehicle component of the offender's violation. The ignition interlock device provisions are also a meaningful public safety and rehabilitation tool.

The Division would request, however, that the phrase "carrying school children," which appears in the first line of subsection (a), be changed to "carrying children" to avoid any interpretation that this provision would not apply to a bus or other vehicle transporting children to summer camp, a church function or the like. Deletion of the word "school" in this phrase also brings consistency to the wording used throughout the remainder of this section.

In subsection (d), the term "school van" should be deleted and replaced with "student transportation vehicle."

Also, in subsections (d) (1) and (d) (2), we would recommend deletion of the words "not to exceed three years, unless the court, pursuant to subsection (e) of section 53a-29 of the general statutes, determines in its discretion that a period of up to five years of probation is warranted" to provide for consistency with other statutes. Additionally, in subsections (d) (1) and (d) (2) we would recommend that the requirement for an ignition interlock device (IID) be set at three years instead of the two years as now drafted. It is our understanding that this change is necessary because the existing software utilized by the Department of Motor Vehicles (DMV) does not allow for the recording of a two-year IID period, but only one year or three years. Thus there would be an issue with implementing the legislation as now drafted as it would impose a mandate for DMV to spend money and personnel time that the department does not have to accomplish the necessary software changes.

Section 3 of the bill deals with the timing of blood alcohol tests in cases of suspected impaired driving. In Public Act 10-124, the General Assembly provided for an exception to the two-hour time limit for blood alcohol tests in intoxicated boating cases, but only when expert testimony is provided to establish that the test was a reliable determinant of the blood alcohol content at the time of operation. Section 3 of S.B. No. 365 would extend the same exception in section 14-227a of the General Statutes, i.e., results of chemical tests conducted after more than two hours would be admissible in impaired driving cases so long as expert testimony was provided to establish their reliability. While expert testimony may not be available in every case, because the facts won't support the testimony, there will be those cases where reliance on back extrapolation testimony will be appropriate to show that the defendant had an elevated blood alcohol content at the time of operation. In those cases, the expert testimony should be admissible and, thereafter, tested in the crucible of cross-examination.

Section 3 is necessary to provide effective prosecution of impaired driving cases in those instances where testing cannot be commenced within two hours but, chemical testing after two hours is scientifically defensible. There are multiple reasons why testing may not commence within two hours of operation. In the most serious cases, law enforcement and emergency personnel may be focused on tending to injured parties or saving lives; concerns that must take priority over the collection of evidence. In less serious cases, law enforcement officers may also be delayed by public safety concerns. For example, when the driver of a school bus carrying children is stopped for an impaired driving investigation (see discussion of Section 2 above), officers must account for all of the children, record identifying information, ensure that traffic patterns do not pose a risk to the children who are standing curbside waiting for alternate rides. These responsibilities, especially if a school bus is full, can easily delay the transportation of the suspect to the police department such that the two hour window has closed before testing can

commence. In yet other cases, law enforcement efforts are frustrated by motorists who evade crash scenes or otherwise engage in evading or delaying tactics such as feigning illness or injury; actions typically engaged in by experienced repeat offenders who are familiar with the two-hour rule. Simply put, offenders should not be rewarded for the carnage or delays that they create and law enforcement should not be penalized for prioritizing public safety over chemical testing when there is no scientific justification for enforcing the two-hour limit.

In conclusion, the Division of Criminal Justice respectfully recommends the Committee's JOINT FAVORABLE SUBSTITUTE Report for S.B. No. 365 with the revisions referenced herein. The Division wishes to express its appreciation to the Committee for its consideration of this legislation. We would be happy to provide any additional information or answer any questions the Committee might have.